

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1-04-CR-279

Plaintiff,

Hon. Richard Alan Enslen

v.

CHERYL L. ROBERTS,

ORDER

Defendant. /

This matter is before the Court on Defendant Cheryl L. Roberts' Motion for Copies. Defendant alleges she is attempting to prepare a § 2255 motion claiming ineffective assistance of counsel based on counsel's failure to file an appeal as requested, counsel's withdrawal of objections to the presentence report, counsel's failure to research and present mitigating factors to lessen Defendant's sentence, counsel leaving her at the first scheduled sentencing hearing to speak for herself, and counsel's defeating her efforts to raise objections on her own behalf as to monetary amounts alleged in the presentence report.

The Supreme Court has "specifically held that there is no constitutional necessity, at least absent a showing of particularized need, to provide a free transcript to a prisoner who requests it in order to prepare a post-conviction motion." *Boone v. Weizel*, 917 F. Supp. 518, 520 (6th Cir. 1996) (citing *United States v. Maccollom*, 426 U.S. 317 (1976); see also *United States v. Chambers*, 788 F. Supp. 334, 337 n.2 (6th Cir. 1992) (moving for free transcripts under § 753 before the filing of the § 2255 motion is allowed). Therefore, a petitioner does not possess an automatic right to access to a hearing transcript at tax payers' expense, a prisoner is only entitled to a transcript with no charge if a district judge certifies her asserted claim is "not frivolous" and that the transcript is needed to decide the issue. *Maccollom*, 426 U.S. at 326; see 28 U.S.C. § 753(f) (trial judge or circuit judge

must certify that “the appeal is not frivolous (but presents a substantial question).”) The Supreme Court made clear that § 753(f) “does not require that a § 2255 plaintiff must *prove* [her] claim in order to obtain a transcript, but only that [s]he convince the district court that such claim is not frivolous.” *Maccollom*, 426 U.S. at 326.

After review of Defendant’s allegations and of the record, the Court, in its discretion, finds Defendant has shown her claim that counsel failed to file a requested notice of appeal presents a substantial question and is “not frivolous.” However, it is equally clear that the prosecution of that claim does not require the production of transcripts, as this conduct would have not have been preserved in any Court proceedings. In respect to Defendant’s other stated grounds of ineffective assistance of counsel, the Court declines to certify them as “not frivolous” and finds they do not present a substantial question as required under § 753(f).

THEREFORE, IT IS HEREBY ORDERED that Defendant Cheryl L. Roberts’ Motion for Copies (Dkt. No. 62) is **DENIED**.

DATED in Kalamazoo, MI:
November 14, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE